

**MOZAMBIQUE  
SUBMISSION TO  
THE AFRICAN  
COMMISSION ON  
HUMAN AND  
PEOPLES' RIGHTS**

54<sup>TH</sup> ORDINARY SESSION  
OF THE AFRICAN  
COMMISSION ON HUMAN  
AND PEOPLES' RIGHTS

22 Oct – 5 Nov 2013

**AMNESTY  
INTERNATIONAL**



**Amnesty International Publications**

First published in 2013 by  
Amnesty International Publications  
International Secretariat  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW  
United Kingdom  
[www.amnesty.org](http://www.amnesty.org)

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Index: AFR41/007/2013  
Original Language: English  
Printed by Amnesty International, International Secretariat, United Kingdom

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# MOZAMBIQUE

## AMNESTY INTERNATIONAL SUBMISSION TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

54TH Ordinary Session of the African Commission on Human and Peoples' Rights, Oct - Nov 2013

In accordance with Article 62 of the African Charter on Human and Peoples' Rights, States Parties to the Charter are required to submit every two years, a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognised and guaranteed by the Charter.

Mozambique has submitted a Periodic Report for the period 1999 - 2010 to the African Commission on Human and Peoples' Rights as per Article 62. It is in light of this submission made by Mozambique, that Amnesty International hereby makes this submission to the African Commission on Human and Peoples' Rights for consideration when reviewing the report of Mozambique.

### PART I: INTRODUCTION

Mozambique acceded to the African Charter on Human and Peoples' Rights (henceforth African Charter) in 1989 and submitted its first periodic report to the African Commission on Human and Peoples' Rights (henceforth African Commission) in September 1994. It also ratified the African Charter on the Rights and Welfare of the Child in 1998, the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights in July 2005; as well as the Protocol on the Rights of Women in Africa in December 2005. In addition it has facilitated visits of African Commission Promotion Missions to the country in 2000 and 2010, as well as the visit of the Special Rapporteur on Prisons and Conditions of Detention in 1997 and 2001.

The Constitution of the Republic of Mozambique (henceforth the Constitution), which is currently under review, states, "The Republic of Mozambique is a State governed by the rule of law, based on ... the respect for and guarantee of fundamental human rights and freedoms.." <sup>1</sup> It further states that constitutional rules prevail over all other rules of the legal order. <sup>2</sup> These constitutional rules include the right to life, <sup>3</sup> the right not to be arbitrarily

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<sup>1</sup> Article 3 of the Constitution

<sup>2</sup> Article 2(4)

<sup>3</sup> Article 40 (1) All citizens shall have the right to life and to physical and moral integrity, and they shall not be subjected to torture or to cruel or inhuman treatment. (2) There shall be no death penalty in the Republic of Mozambique.

deprived of one's liberty,<sup>4</sup> and the right not to be subjected to torture or to cruel or inhuman treatment,<sup>5</sup> the right of access to justice,<sup>6</sup> right to freedom of expression,<sup>7</sup> association<sup>8</sup> and assembly;<sup>9</sup> as well as protection of the child.<sup>10</sup>

According to the Constitution, validly approved and ratified international treaties enter into force in Mozambique once they have been officially published.<sup>11</sup> To further protect human rights in the country the post of Justice Ombudsman was established in 2006 in accordance with the Constitution<sup>12</sup> and a Justice Ombudsman was elected by Parliament on 13 May 2013. In addition, in May 2009, Mozambique Parliament approved a bill creating a National Human Rights Commission, with the 11 commissioners being sworn in on 5 September 2012.

Despite positive steps towards the promotion of human rights and Mozambique's stated commitment to these rights, Amnesty International is concerned that Mozambique has failed to comply with its human rights obligations under the African Charter by perpetuating and allowing human rights violations within its territory. The organization is particularly concerned that the country has not complied with its obligations under articles 1, 4, 5, 6, 7, 9, 10, 11, and 18 of the Charter.

In this submission, Amnesty International provides information regarding Mozambique's observance of its human rights obligations under the African Charter on Human and Peoples' Rights and highlights the organization's concerns about the failure of Mozambique to comply with its human rights requirements. The organization also makes a number of recommendations for action by the Mozambique government in each of the areas of concern.

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<sup>4</sup> Article 59(1) In the Republic of Mozambique everyone has the right to security and nobody shall be detained and put on trial except in accordance with the law

<sup>5</sup> Article 40

<sup>6</sup> Articles 62, 64, 65, 66, 69 and 70

<sup>7</sup> Article 48: (1). All citizens shall have the right to freedom of expression and to freedom of the press, as well as the right to information. (2.) The exercise of freedom of expression, which consists of the ability to impart one's opinions by all lawful means, and the exercise of the right to information shall not be restricted by censorship.

<sup>8</sup> Article 52 (1) All citizens shall enjoy freedom of association.

<sup>9</sup> Article 51: All citizens shall have the right to freedom of assembly and demonstration, within the terms of the law.

<sup>10</sup> Article 47: (1.) Children shall have the right to protection and the care required for their well being. (2.) Children may express their opinion freely on issues that relate to them, according to their age and maturity. (3.) All acts carried out by public entities or private institutions in respect of children shall take into account, primarily, the paramount interests of the child.

<sup>11</sup> Article 18

<sup>12</sup> Article 256

## PART II: SUBSTANTIVE PROVISIONS

### ARTICLE 1: LEGISLATIVE AND OTHER MEASURES TO GIVE EFFECT TO HUMAN RIGHTS

Most of the human rights standards contained in the African Charter have been enshrined in the Mozambique Constitution. However, Amnesty International is concerned that not all the rights enshrined in the African Charter have been included in the Mozambique Constitution. Furthermore, in many cases legislation to give effect to human rights contained in the African Charter and the Constitution is lacking.

#### Torture, cruel, inhuman and degrading treatment and punishment

Apart from being a party to the African Charter, Mozambique has ratified the UN Convention against Torture (CAT), International Convention on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CRM), the Convention of the Rights of Persons with Disabilities (CRPD), as well as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, all of which prohibit torture and/or cruel, inhuman and degrading treatment and punishment.

Article 40 of the Constitution also prohibits cruel and inhuman treatment. However this Article does not specify a prohibition on degrading treatment, which is only mentioned in the context of extradition in Article 67. Furthermore, the Constitution does not refer to cruel, inhuman or degrading punishment.

Certain forms of cruel, inhuman and degrading treatment and/or punishment are also prohibited in law by Article 6 of the Law for the Promotion and Protection of the Rights of the Child;<sup>13</sup> as well as the Law Abolishing the Penalty of Whipping.<sup>14</sup> The latter outlaws only whipping as a penalty for crimes while the former prohibits cruel treatment of the child, but does not refer to inhuman or degrading treatment or punishment.

The Police Disciplinary Regulations of 1987 prohibit torture and ill-treatment by police; however in September 2012 the Constitutional Court ruled that these regulations had been revoked as they had come into force during the time of the Mozambique People's Police (PPM) when Mozambique was a one-party State. A new Disciplinary Regulation is not yet known to have been enacted. Therefore, although there are a number of national laws that can be used to punish torture, cruel, inhuman and degrading treatment and/or punishment in the country, Mozambique has not yet enacted any legislation that specifically prohibits torture and such treatment and punishment, particularly by agents of the State.

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<sup>13</sup> Law 7/2008 of 9 July 2008 which states, "No child shall be subjected to negligent, discriminatory, violent and cruel treatment or be subjected to any form of exploitation or oppression..."

<sup>14</sup> Law 4/89 of 18 September 1989. Article 1 revoked Law 5/83 of 31 March 1983 which introduced whipping as a penalty for crimes while Article 2 pardoned all sentences of whipping that had not been executed at the time of entry into force of the law

### Prohibition of mass expulsions of non-nationals

Article 20 of the Constitution states, “Mozambique shall grant asylum to foreigners persecuted on the grounds of their struggle for national liberation, for democracy, for peace and for the protection of human rights.” Apart from this Article, the Constitution does not make any provisions for non-nationals. It does not contain a prohibition against the mass expulsion of non-nationals and there appears to be no law to this effect either.

### ARTICLE 4: RIGHT TO LIFE

The right to life is enshrined in Article 40 of the Constitution. Mozambique has also abolished the death penalty. However, police in Mozambique have shot and killed numerous individuals in circumstances which amount to a violation of their right to life. In 2009, Amnesty International published a report documenting over 26 incidents of police shooting at alleged criminals, between 2006 and 2009 in which at least 46 people were killed. Some of these cases appeared to be extrajudicial executions.<sup>15</sup> Authorities have often tried to justify these killings by stating that those who were killed were criminals, even in cases where the individuals had never been convicted of a crime. Regardless of the conviction or lack of conviction of an individual, extra-judicial executions are a violation of Mozambique’s national and international human rights obligations and commitments.

Police authorities have also told Amnesty International on numerous occasions that extra-judicial executions and excessive use of force by police are not part of police practice and that such acts are carried out by “over-zealous” police officers. However, cases of extrajudicial executions continue. By failing to ensure thorough, prompt, impartial and adequate investigations and bringing suspected perpetrators to justice in the majority of cases of police killings, they have failed to send a clear message to all police officers that such actions will not be tolerated and those found responsible for these actions will be held to account.

## **THE KILLING OF ALFREDO TIVANE IN 2013 AND USE OF FORCE DURING SUBSEQUENT DEMONSTRATIONS**

Alfredo Tivane was a minibus driver who operated between the centre of Maputo city and T3 neighbourhood in Matola (Maputo province). On Tuesday 19 March 2013, at about 22:00 hours, he was manoeuvring his minibus, which was empty at the time, near a local market when police in a car ordered him to stop. When he failed to do so, two police officers opened fire on his minibus with AK-47 rifles killing him instantly.

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<sup>15</sup> For further information see “I can’t believe in justice any more”: Obstacles to justice for unlawful killings by the police in Mozambique (AFR 41/004/2009); Briefing to the Parliament (Assembly) of Mozambique (AFR 41/002/2009); and Licence to Kill: Police accountability in Mozambique (AFR 41/001/2008).

According to press reports, the day after the killing over 100 residents of the T3 neighbourhood went to the local police station to protest the killing of Alfredo Tivane and demand the removal of the police station from the area which they felt did not protect them. The police reportedly tried to talk to the crowd to convince them to leave, but failed. The crowd then started throwing stones at the police station, which the police responded to by firing rubber bullets in the crowd first and then live ammunition into the air to disperse the crowd.

On 26 March several local newspapers quoted the National Police spokesperson as saying that the police officers responsible for the killing of Alfredo Tivane had been arrested and that they had acted without the consent of their superiors. No information was provided regarding the excessive use of force during the demonstrations and no further information has been provided regarding investigations into the killing of Alfredo Tivane or prosecution of the officers.

#### ARTICLE 5: TORTURE AND CRUEL, INHUMAN AND DEGRADING PUNISHMENT OR TREATMENT

Despite the legal prohibition of torture, there have been reports of torture and other ill-treatment by police in the country. During visits by Amnesty International to places of detention in Mozambique in 2012 and 2013, many of the inmates interviewed by the delegates said they had been beaten or threatened with beatings by police while held at police stations. They specifically mentioned the 7th and the 16th Police Stations in Maputo city; the 2nd Police Station in Moamba, Maputo Province; the 2nd Police Station in Nampula city; and the Police Post at Faina, Nampula Province. Other forms of ill-treatment by the police were also mentioned. One man told the delegates how police had taken him to a beach, after having beaten him, and held a gun to his head threatening to shoot him if he did not confess to having committed the crime for which he was accused. On another occasion, a female detainee told a delegation member that at the 7th Police Station in Maputo she had been kept for seven days alone in a dark cell without food or [sufficient] water, and had to sleep on the floor. She said she had cried for help but was ignored. She also said at one point she was sexually assaulted by four male police officers. She had lost consciousness and when she came round she was naked and four police officers were touching her body. She told them to stop and they laughed.

There were also complaints of ill-treatment by prison guards particularly in the Ndhlavela Women's Prison in Maputo. In November 2012, Amnesty International received information of repeated complaints of ill-treatment by a female prison guard at this prison and yet the same prison guard continued in service at the prison. In May 2013, Amnesty International delegates found the same prison guard at the prison and it did not appear that any investigation had been carried out into complaints of alleged ill-treatment by her.

#### ARTICLE 6: THE RIGHT TO LIBERTY AND SECURITY OF THE PERSON AND PROHIBITION AGAINST ARBITRARY ARREST AND DETENTION

The Constitution<sup>16</sup> and Mozambique Criminal Procedure Code<sup>17</sup> are clear that arbitrary arrests

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<sup>16</sup> The right to security of person and not to be arbitrarily arrested is enshrined in Mozambique law. Article 59 (1) of the Constitution states that no one can be deprived of their liberty except in accordance with the law<sup>16</sup> and Article 61 prohibits the unlimited or indefinite deprivation of liberty as a penalty or security measure.



and detentions are prohibited, however in November 2012 Amnesty International published a report, “Locking up my rights: Arbitrary arrests, detentions and treatment of detainees in Mozambique”,<sup>18</sup> which revealed that arbitrary arrests and detentions regularly occur. Despite safeguards in the law, police frequently arrest individuals without having sufficient evidence, and investigate later. During visits to places of detention in the country, Amnesty International came across several cases where police officers did not appear to have sufficient grounds to suggest that a crime had been committed, let alone that there were grounds for suspicion that it was committed by the detained person. The case of 15-year-old Ana Silvia (not her real name) below is a relevant example. Furthermore, Amnesty International’s research found that police often arrest individuals without an arrest warrant in situations where an arrest warrant is legally required.<sup>19</sup> Amnesty International has also documented cases where the police carried out arrests and detentions that were not procedurally compliant with national or international law because they failed to inform those being arrested of their rights. Other breaches included violating detainees’ right to see a lawyer; forcing detainees to sign documents; beating or ill-treating detainees to force them to confess; and failing to promptly take those detained before a competent authority to have the legality of their detention determined; as well as failing to ensure that detainees are tried within a reasonable time.<sup>20</sup>

### **ANA SILVIA\*<sup>21</sup>**

On 11 November 2010, following the funeral of her mother, police went to the house of 15-year-old Ana Silvia\* and told her to report on 16 November to the 2nd Police Station in Moamba district, Maputo Province. Accompanied by her father on the day, she was questioned by police officers in the presence of the Chefe de Quarteirão (a person with responsibility over a block of houses). She was accused of having murdered her mother who was found dead at home on 9 November 2010 even though there were no obvious signs of a suspicious death, no sign of Ana Silvia\*’s involvement, and no autopsy having been carried out. Apparently the accusation against Ana Silvia\* was based on information provided by the Chefe de Quarteirão who stated that Ana Silvia\* had argued with her mother some days prior to her death.

According to Ana Silvia\*, her mother had left home early on the morning of 9 November 2010 and had returned

<sup>17</sup> Article 251 of the Mozambique Criminal Procedure Code defines an arrested person as, “one on whom there is a strong suspicion of having committed a crime, the existence of which is sufficiently proven.” This indicates that a person cannot be arrested unless there is a strong suspicion that they have committed a crime and there is sufficient proof that that crime took place.

<sup>18</sup> Mozambique: ‘Locking up my rights’: Arbitrary arrest, detention and treatment of detainees in Mozambique, AI Index: AFR 41/001/2012, 22 November 2012

<sup>19</sup> According to Articles 287 and 288, an arrest may be carried out by any individual when a person is caught in *flagrante delicto*, that is, caught in the act of committing a crime, or is pursued running from the scene of the crime, or caught soon after the commission of a crime with objects or some other clear indication that the individual participated in the commission of the crime. Article 291 provides that where a person is not caught in *flagrante delicto* an arrest may only be made pursuant to an arrest warrant and only when the person being arrested is suspected of having committed a crime punishable by imprisonment.

<sup>20</sup> Most of these issues are discussed in greater detail under Article 7 below

<sup>21</sup> \*Not her real name.

during the night, after Ana Silvia\* had gone to bed. The next day Ana Silvia\* found her mother's body. She told the delegation member that she had not seen any signs of injury on the body, but was later told by others that liquid had been coming out of her mother's mouth. She said that after the police accused her of killing her mother, they asked her father whether they should beat her to make her tell the truth, but her father refused to allow them to do so. She was detained at the police station that night and said she was then transferred to the district prison in Moamba around 19:00 hours the following day, where she was held for over three months. On 27 February 2011, she was transferred to the Maputo Civil Prison where she stayed for almost five months before being transferred to the Ndlhavela Women's Prison on 18 July 2011. When the delegation visited Ana Silvia\* on 17 February 2012, 15 months after her arrest, she was being held in a cell with adult women and had still not been tried.

Her lawyer informed Amnesty International on 20 March 2012 that, despite having filed a petition for a writ of habeas corpus on her behalf, she remained in detention and he had received no response from the court. Amnesty International was informed that on 9 July 2012, after almost 20 months in pre-trial detention and despite the lack of any obvious signs of a suspicious death or an autopsy, she was convicted of murder and sentenced to one year in prison. Having already served over a year and a half, she was immediately released. The Attorney General, however, in his response to Amnesty International did not respond to allegations that no autopsy was carried out on her mother's body, but stated that Ana Silvia\* was found guilty of strangling her mother to death and sentenced to two years. He stated that as she had already spent over half of her sentence in detention, she was granted conditional release.

Amnesty International has also come across cases of convicted individuals held in detention even after the expiry of their sentences. Prison authorities said this is due to the lack of necessary paperwork, without which they could not release prisoners. Amnesty International delegates were however informed by detainees and prisoners in one prison that the authorities there often refuse to release those who have completed their sentence unless they pay money.

## **GASPAR MAGALHÃES**

Gaspar Magalhães was sentenced to 4 months in prison by the First Section of the City Court in Nampula on 5 December 2012 after being convicted of theft. He completed his sentence on 5 April 2013. However, he was still imprisoned in the Nampula Central Prison at the time of Amnesty International's visit to the prison on 6 June 2013. Amnesty International has received no further information regarding this case to date.

### ARTICLE 7: RIGHT OF ACCESS TO JUSTICE

#### Right to presumption of innocence

As many arrested individuals have their first interrogation without a lawyer, they are more susceptible to the violation of their rights. Amnesty International has spoken to a number of detainees and convicted individuals who stated that they had been beaten or threatened with beating to make them confess to the crime of which they were accused. Many said they were made to sign documents the contents of which they did not know and/or understand.

#### The right to defence

Although the right to defence, legal assistance and aid is enshrined in Article 62 of the

Mozambique Constitution, individuals are often tried without a lawyer or are represented by underqualified, or even unqualified, individuals. Many individuals cannot afford to pay a lawyer and therefore have to use the services of the Institute for Legal Representation and Assistance (*Instituto de Patrocínio e Assistência Jurídica*, IPAJ). This Institute exists to provide free legal assistance to those who cannot afford to pay for their own defence,<sup>22</sup> however Amnesty International delegates have been told, including by members of IPAJ, that in some cases IPAJ lawyers charge a fee for their services. In addition, in order to obtain free legal assistance individuals have to present a certificate of poverty and they need to pay a fee in order to obtain this certificate. Many cannot afford the fee for the certificate or the fee charged by IPAJ lawyers and end up being held and going through the criminal process without defence. Even in cases where accused persons have an IPAJ lawyers assigned to their case, the lawyers often fail to communicate with them for long periods or to follow their case, resulting in inadequate legal representation.

In certain cases students from academic institutions, such as the Legal Practice Centre (*Centro de Prática Jurídica*) at Eduardo Mondlane University in Maputo and the Unit for Legal Assistance (*Unidade de Assistência Jurídica – UAJ*) at the Catholic University in Nampula, have represented accused persons. However these students are undertrained and underqualified.

The court should nominate an *ad hoc* legal representative if an individual appears in court without a lawyer. However, Amnesty International has spoken to prisoners who believed that they had been convicted without legal representation. It was only after further questioning that it transpired that they had been given a court appointed official to represent them but had not known the individual was their legal representative. Article 25 of the Mozambique Criminal Procedure Code allows *ad hoc* legal representatives appointed by the court to request time to consult with their client; however, based on the information Amnesty International has received, many *ad hoc* legal representatives fail to do this.

The right to be tried within a reasonable time

In February 2012, Amnesty International spoke to José Capitine Cossa at the Machava Maximum Security Prison (B.O), where he had been held for over 12 years without charge or trial. Amnesty International raised this case with the Attorney General who stated that there were signs of irregularity with his detention and ordered his release. Over a year later, in May 2013, the delegates visited the same prison and found Armando António Manhiça, who had been held without charge for over 5 years.

The Mozambique Criminal Procedure Code provides that no one can be held without trial for longer than seven months in general. The seven months can be extended for up to nine months in exceptional circumstances and in very exceptional circumstances up to 11 months.<sup>23</sup> However, individuals are often held without trial for over a year and sometimes even longer. The cases of José Capitine Cossa and Armando António Manhiça are extreme examples, but by no means the only examples of the violation of the right to be tried within a reasonable time. During visits to prisons in February 2012, Amnesty International delegates found scores of people in various prisons, held for longer than 12 months and some for

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<sup>22</sup> Article 1 of the Organic Statute of IPAJ.

<sup>23</sup> Article 308 and 309.

longer than 24 months. The delegates returned to the country in May 2013 and, although the length of pre-trial detention in some prisons had decreased, they still found cases of individuals in pre-trial detention for longer than 12 months.

## **JOSÉ CAPITINE COSSA (ALSO KNOWN AS ZECA CAPETINHO COSSA)**

On 16 February 2012, an Amnesty International and Mozambique Human Rights League (Liga Moçambicana de Direitos Humanos) joint delegation spoke to José Capatine Cossa in the Machava Maximum Security Prison (BO). He had been in the prison ever since he was arrested by officers from the Mozambique Republic Police (Policia da República de Moçambique - PRM) while selling sculptures on the side of the road in Maputo city. He had not been convicted of any crime, nor had he had any kind of court hearing. In fact, it did not appear that he had even been charged with any offence. José Capatine Cossa told the delegation that despite never having been convicted, he had been detained in the Maximum Security Prison for over 12 years. He did not remember the exact date of his arrest and detention, but other detainees who had been held since 2001 and 2003 told the delegation that he was there when they arrived and that he had not left since. He had no lawyer and had not been informed of the reason for his continued detention without trial or when he would be brought to court to defend himself.

José Capatine Cossa remained in detention until his release on 4 September 2012 following separate, written interventions from the Human Rights League and Amnesty International on 9 March and 9 August 2012 respectively. In a response to a memorandum sent by Amnesty International, the Attorney General stated that José Capatine Cossa's release had been ordered as, "there were signs that his detention had been irregular." He stated that an investigation was being carried out into the situation.<sup>24</sup> However, it does not appear that José Capatine Cossa received any reparations for the 12 years of imprisonment without charge or trial.

## **ARMANDO ANTÓNIO MANHIÇA**

Armando António Manhiça was arrested on 19 December 2007 and accused of murder but had not yet been officially accused at the time of Amnesty International's visit on 30 May 2013. He did not remember much of what had happened or when it happened. He remembered that he had had an altercation with a friend which resulted in the friend throwing a rock at his mouth. He does not remember what happened after that. The next thing he remembers was waking up in hospital where he stayed for 10 days. His friend was also admitted to hospital and later died there. From the hospital he was taken to the 2nd Police Station in Maputo and then to the Criminal Investigation Police where he was told of his friend's death. Then he was taken to a police station which he referred to as the mounted brigade (*brigada Montada*) police station and from there to the Maputo Maximum Security Prison (BO) where he arrived in early 2008. On 25 Feb 2011 the prison wrote to the City Procurator raising this case, but they have received no response to this letter to date.

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<sup>24</sup> Response from the Attorney General to Memorandum to the Attorney General of Mozambique Regarding Findings of Amnesty International's Mission to Mozambique, received by Amnesty International on 10 September 2012.

## ARTICLES 9, 10 AND 11: RIGHT TO FREEDOM OF EXPRESSION, ASSOCIATION AND ASSEMBLY

The rights to freedom of opinion and expression, assembly and peaceful demonstration, as well as association are all guaranteed by articles 48, 51 and 52 respectively of the Constitution.<sup>25</sup> However, there have been a number of arrests and detention of individuals which appear to be aimed solely at suppressing these rights. Such arrests have particularly targeted those carrying out or known to organise peaceful demonstrations such as members of the Mozambique War Veterans Forum (*Fórum dos Desmobilizados de Guerra*) and striking members of the Mozambique Medics Association (*Associação Médica de Moçambique – AMM*).<sup>26</sup>

### THE MOZAMBIQUE WAR VETERANS FORUM (FÓRUM DOS DESMOBILIZADOS DE GUERRA)

Police have arbitrarily arrested members of the Fórum dos Desmobilizados de Guerra (the Forum) on a number of occasions since mid-2010. For example, between 14 November 2011 and 14 February 2012 the Forum's spokesperson, Jossias Alfredo Matsena, was arrested four times. The president of the Forum, Hermínio dos Santos, has also been arrested a number of times since 2010. The most recent incident of his arrest happened on 13 February 2013, when he was arrested without a warrant at his home in Bairro da Machava, Matola municipal at about 06:00 by at least four police officers. The arrest took place the day after the Forum had held a demonstration calling for better pensions. Police reportedly dragged him from his bed, handcuffed him and took him to a car while hitting him with the butt of their guns. He was apparently hit at least six times on the head and was threatened with death. The police first took him to the 1st Police station where he was detained until about 11:00 hours, before being taken to a cell in the Ka Mpfuno Judicial Tribunal in Maputo. At about 16:00 hours he was reportedly transferred to a cell at the Machava Central Prison where he stayed for two days before being taken back to the Ka Mpfuno Judicial Tribunal for a summary trial on 15 March. The

<sup>25</sup> Article 48 (1) All citizens shall have the right to freedom of expression and to freedom of the press, as well as the right to information. (2) The exercise of freedom of expression, which consists of the ability to impart one's opinions by all lawful means, and the exercise of the right to information shall not be restricted by censorship. (3) Freedom of the press shall include, in particular, the freedom of journalistic expression and creativity, access to sources of information, protection of independence and professional secrecy, and the right to establish newspapers, publications and other means of dissemination. (4) In the public sector media, the expression and confrontation of ideas from all currents of opinion shall be guaranteed.

Article 51 All citizens shall have the right to freedom of assembly and demonstration, within the terms of the law.

Article 52 (1) All citizens shall enjoy freedom of association. (2) Social organisations and associations shall have the right to pursue their aims, to create institutions designed to achieve their specific objectives and to own assets in order to carry out their activities, in accordance with the law. (3) Armed associations of a military or paramilitary nature, as well as associations that promote violence, racism, xenophobia or pursue aims that are against the law, shall be prohibited.

<sup>26</sup> For further information please see section on freedom of expression and assembly below.

judge reportedly stated there were no grounds on which to hold him and he was released. During subsequent weekly demonstrations held by the Forum, all of which were reportedly peaceful, some demonstrators were arrested and detained for up to three days before being released without charge.

During these demonstrations, the police used teargas, water canons, rubber bullets and batons against the demonstrators. On 26 February, police reportedly also beat and used water canons against journalists covering the event and a disabled member of the Forum and a woman were injured by police and one person was arrested. According to the Mozambique Press Agency reports, on 12 March four women and six men were badly beaten and nine people were arrested.

In other instances the police have used intimidation tactics to prevent peaceful demonstrations from taking place. This is what happened with students from the Eduardo Mondlane University (UEM) who tried to organize a peaceful demonstration in February 2013.

### **EDUARDO MONDLANE UNIVERSITY MEDICAL STUDENTS**

On 1 March 2013, the *Expresso Digital* reported that medical students from the Eduardo Mondlane University (UEM) had been prevented from carrying out a peaceful demonstration by the Maputo Police City Command. According to the report, the students had made a request in writing on 25 February to carry out a demonstration in solidarity with their colleagues who had received a fail grade by the UEM directors for taking part in a strike by medical doctors earlier in the year. Although the Maputo City Council responded favourably to the request, the police refused to grant them permission. No explanation was given for this refusal. However, according to the newspaper report at 10:25 hours on the morning of the planned demonstration, the Maputo City Police Commander reportedly sent a text message to one of the organisers of the demonstration saying: "They will kill you with a stray bullet. Be careful, that's how things work in this country." The demonstration which was due to start at 13:00 hours, did not take place.

### **ARTICLES 18(3) AND 7: PROTECTION OF THE RIGHTS OF THE CHILD IN CONFLICT WITH THE LAW**

The African Charter requires states to protect the rights of the child as stipulated in international conventions. Such international conventions include the African Charter on the Rights and Welfare of the Child, the International Covenant of Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC), all of which Mozambique has ratified. In terms of these conventions children should be accorded a special level of protection. Those in conflict with the law have the same rights as arrested, detained and accused adults and should not be held in the same cell as adults. However, Amnesty International's research shows that the rights of children in conflict with the law are often violated in Mozambique.

#### **Arrested, detained and accused children**

In Mozambique many children are deprived of their right of access to justice, particularly right to defence and right to be tried within a reasonable time. The age of majority is 18 years of age while the age of criminal responsibility is set at 16 years of age. Mozambique recognises that the State has a special duty to protect children, including those in conflict

with the law and places the responsibility of ensuring that they are legally represented on the Public Prosecution Service.<sup>27</sup> However, during visits to places of detention in 2012 and 2013, Amnesty International delegates came across scores of children between the ages of 16 and 18 years who did not have lawyers and were apparently not being assisted by the Public Prosecution Service. Very often children between 16 and 18 years old are arrested and detained with little or no evidence that they have committed a crime. Once arrested, they remain in pre-trial detention for months, often for longer than the legally prescribed period, and receive little information of the cases against them or their rights. In many cases their detention is not reviewed regularly, as required by international human rights laws and standards<sup>28</sup> and they are rarely offered provisional release while awaiting trial even for petty crimes.

Furthermore, many children under 16 years of age are arrested, detained and have their detention confirmed by the Public Prosecution Service, even though they are not criminally liable. During visits to places of detention in Mozambique, Amnesty International delegates have come across several youths who claimed to be, and appeared to be, younger than 16 years old. Some of these children stated that the police had written 18 years on their charge sheet even though they had said they were younger, or in some cases, did not know their age. They went on to spend prolonged periods in prison in pre-trial detention. The delegates also came across some children with birth certificates as proof of their age but these were ignored by the police and the courts.

It is the duty of the police in the first instance to ascertain the age of a person being arrested and release them if found to be under 16. By failing to do so, the police are thus violating the law and the rights of children by arresting those under 16 years of age.

Officials in Mozambique have informed Amnesty International on several occasions that where there is doubt as to the age of a detainee, such detainee undergoes a medical examination to determine their age and if the examination shows that the detainee is indeed younger than 16 years, a petition is made to a court for their release. In some prisons this is indeed carried out, but it is by no means carried out consistently by authorities in all places of detention.

Police and some prison officials seem to believe the burden of proof is on the minor to prove that they are younger than 16 years. However, in a country where less than 6 per cent of children under the age of five, and even fewer adults, had a birth certificate in 2004,<sup>29</sup> it is not reasonable to expect individuals to have documented proof of age. Furthermore, even where the children do have this proof they do not usually have it on them at the time of arrest and are not always given the opportunity to deliver it to the relevant authority. In one of the prisons visited by Amnesty International, the authorities seemed to be making an effort to either contact the next of kin of the children requesting this document or travel with the children to their homes to obtain it, but in the majority of places of detention this is not done.

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<sup>27</sup> Article 236 of the Constitution and Article 4(d) of Law of the Public Prosecution Service.

<sup>28</sup> Committee on the Rights of the Child, General Comment 10, paras. 81 and 83. See also, Committee on the Rights of the Child, Concluding Observations, CRC/C/MOZ/CO/2, 4 November 2009, para. 89 (b) and (f).

<sup>29</sup> Unicef, [http://www.unicef.org/mozambique/protection\\_4904.html](http://www.unicef.org/mozambique/protection_4904.html) accessed 25/06/12 .

**JOÃO MIGUEL \*<sup>30</sup>**

Amnesty International delegates spoke to João Miguel\* at the Machava Central Prison on 31 May 2013. He had been at the prison since 15 March 2013, serving a six months sentence for stealing a bicycle. He looked younger than 16 years old, but could not answer the delegates question about his age as he has a speech impediment and did not seem to understand. However, a neighbour who was also in the prison told the delegates that João Miguel was about the same age as his son who was 12 years of age. João Miguel's brother, who was also in prison for an unrelated offence, said that João Miguel was 13 years of age.

**FERNANDO MAISSE\* AND ALFONSO RAFAEL \***

Fernando Maisse\* and Alfonso Rafael\* were arrested on 9 October 2012, in Namarroi district, Quliemane province on suspicion of having stolen a mobile phone and then sent to the Civil Prison in Quelimane. They had been in detention for eight months at the time of Amnesty International's visit to the prison. Both are students and had documents with them confirming they had been born in 1998 and 1997 respectively, which the delegates were able to see. In spite of this, the police said that they were 17 and 18 respectively at the time of their arrest in 2012. On 22 December 2012, the Provincial Public Prosecution Service sent a request for their conditional release to the court, in view of, what it called the dispute over their age, the low nature of their crime, the fact that it was their first offence and that they were both students. The court failed to respond to this request. However, on 25 April 2013 the Zambezia Provincial Court accepted the case to proceed to trial. On 15 August, Amnesty International was informed by Fernando Maisse's father that he had been released. However he was unable to provide information on the circumstances of his release.

Non-separation of detained and imprisoned children from adults

Article 17(2)(b) of the African Charter on the Rights and Welfare of the Child, Article 10(3) of the ICCPR and Article 37(c) of the CRC all require children in detention to be held separately from adults. Mozambique authorities have put into place some measures to ensure the separation of children from adults. These steps include the creation of a juvenile section in the Nampula Industrial Penitentiary for accused and convicted children, and a juvenile prison establishment in Boane, Maputo Province, with a capacity for 200 inmates between the ages of 16 and 21 years of age. However, the mixing of children and adults in the same cells continues to be a problem as children are often only sent to juvenile detention centres once they have been convicted. Accused children are sent to the same places of detention as accused adults and are held in the same cells as adults. In some cases, this includes the detention of accused children younger than 16 years, the age of criminal responsibility in Mozambique, with convicted adults.<sup>31</sup>

**PART III: RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW****Amnesty International requests the African Commission to call on the government of**

<sup>30</sup> \*Not his real name.

<sup>31</sup> See also, Committee on the Rights of the Child, Concluding Observations, CRC/C/MOZ/CO/2, 4 November 2009, para. 89(c).



**Mozambique to:***Regarding the ratification and domestication of human rights treaties*

- Incorporate the provisions of the African Charter and other international human rights treaties and standards into domestic law and in particular enact legislation criminalising torture, cruel, inhuman and degrading treatment, as well as punishment, and providing those who have been subjected to such acts, or their families in the event of death, the right to claim not only compensation, but redress including rehabilitation.
- Ratify all outstanding human rights treaties, in particular the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol; the First Optional Protocol to the International Covenant on Civil and Political Rights; as well as the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

*Regarding the respect for life and integrity of the person*

- Ensure that prompt, thorough, impartial and independent investigations are carried out into all cases of suspected extrajudicial executions, as well as all cases of use of force or firearms by police and death in custody of detainees and prisoners.
- Ensure that all perpetrators of unlawful killings, including those with command responsibility, are brought to justice in proceedings which meet international standards of fairness.
- Ensure that victims of human rights violations by the police, or their families in cases resulting in death, receive full reparations for the violation.
- Extend an invitation to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions and facilitate his visit to Mozambique in accordance with his request of April 2008.

*Regarding the use of torture, cruel, inhuman and degrading punishment or treatment*

- Ensure prompt, impartial and thorough investigations are carried out into all suspected cases of torture and ill-treatment by the police and ensure that perpetrators of such violations are brought to justice in fair trials.
- Ensure that all police officers and prison guards are made fully aware of their responsibilities to protect detainees and understand that acts of torture or cruel, inhuman or degrading treatment or punishment will not be tolerated and that they are criminal offences in national law and international treaties to which Mozambique is party.
- Ensure that those subjected to torture, cruel, inhuman or degrading treatment are able to claim full reparations, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

*Regarding prohibition of arbitrary arrest and detention*

- Ensure that prompt, thorough, impartial and independent investigations are carried out into cases of arbitrary arrest and detention and ensure that any police officers found responsible for human rights violations are subjected to disciplinary proceedings and criminal proceedings as appropriate.
- Ensure reparation, including fair and adequate compensation for victims of arbitrary arrests and detentions.

*Regarding the right of access to justice*

- Ensure all accused persons have adequately trained legal assistance, including by evaluating the existing systems for legal assistance to ascertain what changes need to be made to improve the quality, coverage and effectiveness of legal aid provision, and to ensure that free legal assistance is indeed free, competent and effective.
- Take all necessary steps to ensure that the police do not commit acts of torture or inflict other cruel, inhuman or degrading treatment on suspects or threaten suspects to force them to admit guilt or implicate others in crimes.
- In the case of those detained pending trial, ensure that they are brought to trial within a reasonable time or released pending trial, and in particular ensure the release of anyone who has been detained for a period commensurate with the normal sentence for the offence.

*Regarding freedom of expression, association and assembly*

- Ensure that individuals are not harassed or arrested merely for the peaceful exercise of their right to freedom of opinion, expression, association and assembly.
- Ensure that police do not unlawfully prevent or suppress peaceful demonstrations, including through the use of excessive force or intimidation.

*Regarding protection of the rights of the child*

- Ensure that all authorities take steps to prevent the detention of children under 16 years of age in accordance with Mozambique law and international human rights standards and ensure that where there is doubt as to the age, authorities make every effort to ascertain the age of the child, including visiting the child's home and/or carrying out necessary medical exams as a matter of urgency, and ensure the child is immediately released if found to be less than 16 years of age.
- Ensure that all children in conflict with the law have adequate legal representation.
- Ensure that detained children are held separately from detained and imprisoned adults.

**APPENDIX: AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE<sup>32</sup>**

Mozambique: Submission to the United Nations Human Rights Committee, 109th Session Of The United Nations Human Rights Committee (14 October – 1 November 2013), September 2013, AI Index: AFR 41/005/2013

Amnesty International's Comments on the Draft Constitution of Mozambique AI: Index AFR 41/003/2013

Mozambique: Locking up my rights - case sheet, AI Index: AFR 41/006/2012, 22 November 2012

Mozambique: 'Locking up my rights': Arbitrary arrest, detention and treatment of detainees in Mozambique, AI Index: AFR 41/001/2012, 22 November 2012

Arbitrary arrest, detention and treatment of detainees in Mozambique: Summary of findings, AI Index: AFR 41/004/2012, 22 November 2012

Press Release: Mozambique: Thousands unlawfully held in substandard prisons, 22 November 2012

Amnesty International Report 2012, State of the World's Human Rights, Human Rights in the Republic of Mozambique (AI Index POL 10/001/2011)

Mozambique: Amnesty International urges investigation into cases of extrajudicial executions, arbitrary detention, torture and ill-treatment, and excessive use of force, AI Index: AFR 41/002/2011, 9 June 2011

Amnesty International Report 2011, State of the World's Human Rights, Human Rights in the Republic of Mozambique (AI Index POL 10/001/2012)

Suggested recommendations to States considered in the tenth round of the Universal Periodic Review, 24 January – 4 February 2011, AI Index: IOR 41/034/2010, 1 November 2010

Press Release: Mozambique police must only use live ammunition to protect life during demonstrations, 1 September 2010

Amnesty International Report 2010, State of the World's Human Rights, Human Rights in the Republic of Mozambique (AI Index POL 10/001/2009)

"I can't believe in justice any more": Obstacles to justice for unlawful killings by the police in Mozambique (AI Index AFR 41/004/2009)

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<sup>32</sup> All of these documents are available on Amnesty International's website:  
<http://www.amnesty.org/en/region/Mozambique>

Briefing to the Parliament (Assembly) of Mozambique (AI Index AFR 41/002/2009)

Amnesty International Report 2009, State of the World's Human Rights, Human Rights in the Republic of Mozambique (AI Index POL 10/001/2009)

Press Release: Thirteen die in Mozambican police cell, 20 March 2009

Licence to Kill: Police accountability in Mozambique (AI Index AFR 41/001/2008)

Abranches Afonso Penicelo in Worldwide Appeals November 2008, (NWS 22/003/2008), 1 November 2008

Amnesty International Report 2008, State of the World's Human Rights, Human Rights in the Republic of Mozambique (AI Index POL 10/001/2008)

Amnesty International Report 2007, State of the World's Human Rights, Human Rights in the Republic of Mozambique (AI Index POL 10/001/2007)

Amnesty International Report 2006, State of the World's Human Rights, Human Rights in the Republic of Mozambique (AI Index POL 10/001/2006)

Amnesty International Report 2005, State of the World's Human Rights, Human Rights in the Republic of Mozambique (AI Index POL 10/001/2005)